



Federal Communications Commission  
Washington, D.C. 20554

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DA 05-1983  
In Reply Refer To:  
1800B3-ALL

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In re: **WKVE(FM), Semora, NC**  
**Facility ID No. 26296**  
Southern Entertainment Corporation  
Application for Renewal of License  
File No. BRH-20030801AJL

Dear Counsel:

On July 7, 2005, the staff released a letter regarding the captioned Application for Renewal of the License of Station WKVE(FM), Semora, North Carolina.<sup>1</sup> Pursuant to Section 1.113(a) of the Commission's rules,<sup>2</sup> the Chief, Audio Division, Media Bureau, on his own motion, sets aside the July 7 Staff Action. This document supercedes that decision.

We have before us an Application for Renewal of the License of WKVE(FM) ("Application") filed by Southern Entertainment Corporation ("Southern") on August 1, 2003.<sup>3</sup> Also before us is a November 23, 2003, Petition to Deny the Application ("Petition")<sup>4</sup> filed by Piedmont Broadcasting

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<sup>1</sup> Letter to John Garziglia, Esquire, Peter Gutmann, Esquire, and John S. Neely, Esquire, DA 05-1939 (MB July 7, 2005) ("July 7, 2005 Staff Action").

<sup>2</sup> 47 C.F.R. § 1.113(a).

<sup>3</sup> File No. BRH-20030801AJL.

<sup>4</sup> Section 73.3516 of the Commission's rules states that a petition to deny an application for renewal of a license will be considered timely filed if it is filed by the end of the first day of the last full calendar month of the expiring license term. 47 C.F.R. § 73.3516(e). Since the first day of the last month of the license term fell on a nonbusiness day, Piedmont's Petition was timely filed. *Id.* Moreover, Piedmont's stations are in competition with WKVE(FM), and competitors have standing as parties in interest. *Waterman Broadcasting*, 17 FCC Rcd 15742, 15744 n.2 (2002),

Corporation (“Piedmont”); Southern’s December 3, 2003, Opposition to the Petition (“Opposition”); and related responsive pleadings.<sup>5</sup>

In its Petition, Piedmont raises three claims warranting consideration at this time:<sup>6</sup> 1) Southern’s 2003 Biennial Ownership Report is inaccurate and conceals an unauthorized transfer of control of WKVE(FM); 2) Southern failed to properly maintain its public inspection file; and 3) Southern misrepresented facts to the Commission when it amended the Application to certify compliance with the Commission’s public inspection file rule, Section 73.3526, even though WVKE(FM)’s file was not in fact compliant with the rules.

**Discussion. Procedural Matter.** Piedmont’s Motion sought additional time to file its Reply to Opposition to Petition to Deny because one of the critical pieces of information – Southern’s purported 2003 Ownership Report – had only recently become publicly available,<sup>7</sup> and Piedmont requested additional time to investigate the pleading’s accuracy. Southern opposed the Motion, arguing that assuming *arguendo* the Ownership Report was only publicly available as of November 17, Piedmont still had more than 30 days to review the Report and prepare its Reply and should not be granted additional time to file its Reply.

We will grant Piedmont’s motion and accept its Reply. Pursuant to Section 1.45 of the Commission’s rules, Southern’s Opposition was due on November 13, 2003, and Piedmont’s Reply would be due on November 18, 2003.<sup>8</sup> Southern did not file its opposition until December 3, 2003 – Commission records do not reveal a motion for extension of time from Southern -- and Piedmont filed its Motion more than two weeks later, on December 19, 2003, not submitting the actual Reply until January

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*citing FCC v. Sanders Brothers Radio Station*, 309 U.S. 470 (1940). For the above reasons, Piedmont has standing as a party in interest to file a Petition to Deny the WKVE(FM) license renewal application.

<sup>5</sup> Piedmont filed a Motion for Extension of Time (“Motion”) to file a Reply to the Opposition on December 19, 2003. Southern filed an Opposition to the Motion on December 24, 2003. Piedmont, claiming that it received no response regarding the Motion from the staff, filed its Reply to Opposition on January 6, 2004. Southern thereafter filed a Motion for Leave to File a Response to Reply to Opposition (“Motion for Leave”) on January 22, 2004, and submitted a Response to Reply to Opposition along with its Motion for Leave. Piedmont then filed a Motion for Leave to File Opposition to Response to Reply to Opposition on February 4, 2004, submitting the referenced pleading simultaneously.

<sup>6</sup> Piedmont makes other claims in its Petition: 1) WKVE(FM) has no license to renew because the permit underlying the license is invalid; 2) the Chief, Audio Division, previously erred in finding Southern to be an innocent party that would be injured if the applications filed by Southern’s predecessor, HarryCo, were denied and HarryCo’s permits were canceled; 3) Southern was not entitled to the equitable relief granted by the Chief, as it held a 24% interest in HarryCo and had “unclean hands” as a result of this connection with HarryCo; and 4) Southern has unresolved character issues, including questionable accounting by its predecessor, involvement in an allegedly forged lease, and manipulation of the dates on letters from community members attesting to WKVE(FM)’s service to the community of Semora. As all of these issues have been considered and resolved by the Commission, they will not be further examined in this letter. *Applications for Station WKVE, Semora, North Carolina*, 18 FCC Rcd 23411 (2003) (“*Semora MO&O*”) (granting various WKVE(FM) applications and issuing a Notice of Apparent Liability in the amount of \$19,250 to Southern for willfully and repeatedly violating 47 C.F.R. § 1.17 regarding submission of truthful written statements to the Commission).

<sup>7</sup> Piedmont states that apparently the 2003 ownership report became available only on November 17, 2003, after Piedmont filed its Petition to Deny.

<sup>8</sup> Under Section 1.4(h) of the rules, Piedmont would be accorded three additional days – until November 21, 2003 -- to file its Reply.

6, 2004. Southern is correct that requests for extension of time are not routinely granted,<sup>9</sup> and Piedmont may have had sufficient opportunity to examine WKVE(FM)'s November 2003 ownership report after Southern's opposition alerted it of that filing. However, in order to develop a fuller understanding of the record, and to attempt to resolve, finally, the longstanding dispute regarding WKVE(FM), we will accept and consider both Southern's and Piedmont's authorized but untimely responsive pleading.<sup>10</sup> However, in light of our action below, we do not believe that the public interest warrants consideration of any pleadings beyond Piedmont's reply. These pleadings are unauthorized and provide no decisionally significant facts which are required to be considered in our determination of the public interest.<sup>11</sup> We will therefore deny the Southern and Piedmont motions and dismiss Southern's "Response to Reply to Opposition to Petition to Deny" and Piedmont's "Opposition to Response to Reply to Opposition to Petition to Deny" as unauthorized pursuant to Section 1.45 of the Commission's Rules.<sup>12</sup>

*Southern's 2003 Biennial Ownership Report.* In its Petition, Piedmont initially claimed that Southern never filed a Biennial Ownership Report for 2003 ("2003 Report") with the Commission. However, the 2003 Report was filed on August 1, 2003, in accordance with the requirements of Section 73.3615 of the Commission's rules.<sup>13</sup> The 2003 Report was correctly filed with the Commission and, as Piedmont concedes, its claim regarding failure to file the 2003 Report is without merit.<sup>14</sup>

However, in its Reply, Piedmont also claims that the information contained in the 2003 Report is inaccurate. Piedmont claims that Sam Cooper, listed as a 50% shareholder and director of Southern in the 2003 Report, actually sold his entire ownership in Southern to James Hill in 1998. Therefore, states Piedmont, Southern's 2003 ownership report is false,<sup>15</sup> and it conceals an unauthorized transfer of control of station WKVE in violation of Section 310(d) of the Communications Act. Piedmont supports its claim with an affidavit from Frank Wimmer, Piedmont's Vice President, to the effect that he received a

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<sup>9</sup> 47 C.F.R. § 1.46.

<sup>10</sup> *Family Vision Ministries, Inc.*, 18 FCC Rcd 1418 n. 2 (2003).

<sup>11</sup> *KOLA, Inc.*, 11 FCC Rcd 14297 n.2 (1996).

<sup>12</sup> In its Reply, Piedmont claims that the representation of the owners of Southern's shares made in the 2003 Report is incorrect. Piedmont's Reply to the Opposition at 3-4. Section 1.45(c) of the Commission's rules states that "[t]he reply shall be limited to matters raised in the opposition[.]..." We believe that Piedmont's argument is sufficiently related to matters raised in Southern's Opposition – *i.e.*, that the allegedly missing 2003 Ownership Report for WKVE had in fact been filed – that the charge does not constitute "new matter" inappropriately raised in a Reply pleading.

On the other hand, the public interest is also served by the rejection of the further, unauthorized pleadings, as consideration of the numerous later pleadings in this case would unduly hinder the process of resolving the longstanding dispute here. Expedient Commission proceedings are in the public interest. *1998 Biennial Regulatory Review*, 14 FCC Rcd 17525, 17544 (1999). *See also Amendment of Part 25 of the Commission's Rules*, 12 FCC Rcd 915, 916 (1997).

<sup>13</sup> File No. BOA-20030801AJJ. 47 C.F.R. § 73.3615 requires ownership reports to be filed on the date the license renewal application is due and biannually on the anniversary date of the license renewal thereafter. Therefore, Southern's ownership report was timely filed.

<sup>14</sup> In its Petition, Piedmont only alleges that this Report does not exist; no representation-of-ownership claim was made. As stated in Note 5 of this letter, allegations relating to deception in the 2003 Report or the lack of ownership reports from 1999 and 2001 were made by Piedmont only in its Reply.

<sup>15</sup> Because Mr. Cooper had no interest in Southern since 1998, Piedmont speculates that, had biennial ownership reports been filed for 1999 and 2001, they also would have been false.

voicemail message from Sam Cooper at 4:13 p.m. on December 9, 2003, stating that he had “sold [his] interest in the Southern Entertainment Corporation to Jim Hill,<sup>16</sup> and an application was filed with the FCC after that.”<sup>17</sup> Mr. Wimmer also recounts several subsequent phone calls with Mr. Cooper “during which he [Mr. Cooper] said that he was still trying to find the papers demonstrating that he had sold his interest to Mr. Hill in 1998.”<sup>18</sup>

Mr. Cooper did in fact apply on FCC Form 316 to transfer his 50% interest in Southern to Mr. Hill in 1998.<sup>19</sup> This application was granted by the staff on October 30, 2003, in light of the Commission’s *Semora MO&O*.<sup>20</sup> Commission records reflect that this transaction was not consummated until May 3, 2004. The primary evidence proffered by Piedmont in support of its claim that Mr. Cooper actually sold his 50% interest in Southern in 1998 is inadmissible. Initially, Mr. Wimmer’s affidavit recounting a voice mail allegedly left by Mr. Cooper in December of 2003 must be rejected, as it is clearly not the “best evidence” of the content of that message. The best evidence rule provides that the original of a “writing, recording, or photograph” is required to prove the contents thereof.<sup>21</sup> Additionally, Mr. Wimmer’s account of his alleged subsequent conversations with Mr. Cooper, while perhaps not technically hearsay,<sup>22</sup> is of little probative weight in the absence of any extrinsic evidence that Cooper sold his negative-controlling interest in Southern to Jim Hill in 1998, prior to receiving Commission approval.<sup>23</sup> In light of these conclusions, we believe that Piedmont has provided insufficient evidence to support its claim that the 2003 Report was false or inaccurate, and no further inquiry is warranted on this matter or on the false certification and unauthorized transfer of control arguments based on the premise that the 2003 Report was false.

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<sup>16</sup> Jim Hill is listed in the 2003 Report as Southern’s other 50% stockholder, President, and Director.

<sup>17</sup> Piedmont Reply, Declaration Under Penalty of Perjury of Frank Wimmer.

<sup>18</sup> *Id.* Mr. Wimmer further recounts an alleged conversation with Mr. Cooper on January 5, 2003, in which Mr. Cooper stated that “he didn’t feel like he should get involved” and that “all further contact should be through his attorney. *Id.*

<sup>19</sup> Application No. BTCH-19980827EC.

<sup>20</sup> The short-form application was not granted in the *Semora MO&O*, but rather was held by the staff and granted when the *Semora MO&O* resolved the outstanding issues regarding WKVE(FM).

<sup>21</sup> Fed.R.Evid. 1002. *See, e.g., United States v. Morales-Madera*, 352 F.3d 1, 9 (1<sup>st</sup> Cir. 2003) (best evidence rule requires production of the tape rather than transcript); *David N. Smith*, 34 F.C.C.2d 741, 742 ¶5 (1972). Additionally, although Mr. Wimmer’s statement appears to quote the voicemail message, this purported transcript of the tape is not authenticated and Southern provides no other indicia of validity or reliability.

<sup>22</sup> A statement is not hearsay if: the statement is offered against a party and is the party’s own statement, either in an individual or representative capacity. Fed.R.Evid. 801(d)(2)(A). The statement therefore may be admitted into evidence to establish that Cooper and Zimmer discussed the sale of Cooper’s interest in Southern and not for whether Cooper actually did sell his interest in Southern. *See, e.g., Gilbert Broadcasting Corporation*, 79 F.C.C.2d 105, 108 n. 6 (1980).

<sup>23</sup> *See* Note 15, *supra*, and accompanying text. Mr. Cooper allegedly told Mr. Wimmer that he was “trying to find papers” demonstrating that he had sold his interest in Southern, and subsequently informed Mr. Wimmer that “all further contact should be through his attorney.” Piedmont submits no such “papers” with its Reply demonstrating that Mr. Cooper sold any interest in Southern.

*Public inspection file rule violation:* Section 73.3526 of the Commission's rules requires each commercial broadcast station to maintain a public inspection file containing materials related to the station's operation.<sup>24</sup> In its Petition, Piedmont claims that several items were missing from WKVE(FM)'s public inspection file when Mr. Wimmer went to view the file on October 31, 2003. Piedmont states that the file contained no ownership reports dated after 1995,<sup>25</sup> no copy of the pending renewal application or any documentation related to pre-filing announcements, and no copy of "The Public and Broadcasting" procedural manual.<sup>26</sup> In its Opposition, Southern admits that only "The Public and Broadcasting" manual was missing from the public inspection file as of November 1, 2003, and claims that the manual has been replaced.<sup>27</sup>

When lapses occur in the maintenance of the public inspection file, neither negligent behavior of station employees, nor subsequent remedial actions, excuse the rule violation.<sup>28</sup> Substantial compliance with Commission public inspection file requirements is not achieved by reconstruction at a later date.<sup>29</sup> However, an incomplete public inspection file does not necessarily raise substantial and material questions related to a license renewal application.<sup>30</sup> "In and of itself, a violation of the 'public file' rules should, on the surface, not be so repugnant as to require a severe sanction."<sup>31</sup> Moreover, in its Opposition, Southern admits its failure and states that the problem has been corrected.<sup>32</sup>

We emphasize that we do not in any way condone Southern's noncompliance with our rules. In this case, however, Southern has admitted to the violation in its Opposition<sup>33</sup> and has corrected the violation. Even if we were to accept as true Piedmont's allegations, we believe that an admonishment is the appropriate sanction.<sup>34</sup>

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<sup>24</sup> 47 C.F.R. § 73.3526.

<sup>25</sup> 47 C.F.R. § 73.3526 requires that only the most recent, complete ownership report be retained in the public inspection file. Therefore, this claim is without merit.

<sup>26</sup> Piedmont's Petition at 7-8, Frank M. Wimmer's Declaration Under Penalty of Perjury. 47 C.F.R. §§ 73.3526(e)(2), (5), and (8) require the above-referenced items, with the exception of the old ownership reports, to be in the station's public inspection file.

<sup>27</sup> Southern's Opposition at 3. Southern also claims that the other allegedly missing documents were in the public inspection file but were not seen by Wimmer perhaps "because he failed to review the entire Public File carefully" and "rejected several offers [by WKVE staff] to assist in looking for a particular document." *Id.* In its Reply, Piedmont does not press the issue of the WKVE(FM) public file's deficiencies. We will, therefore, assume for the purposes of this decision that the WKVE(FM) public inspection file did not contain "The Public and Broadcasting" – the omission admitted by Southern -- and that the other material was present in the file.

<sup>28</sup> See *Padre Serra Communications, Inc.*, 14 FCC Rcd 9709, 9714 (1999), citing *Gaffney Broadcasting, Inc.*, 23 F.C.C.2d 912, 913 (1970) and *Eleven Ten Broadcasting Corp.*, 33 FCC 706 (1962).

<sup>29</sup> See *Pacifica Foundation*, 95 F.C.C.2d 750, 763 (1983).

<sup>30</sup> See *Letter to Kathleen N. Benfield, Glenn C. Benfield, and M. Anne Swanson, Esq.* 13 FCC Rcd 4102, 4106 (1997), citing *Kaye-Smith Enterprises*, 71 F.C.C.2d 1402, 1413 (1979), *aff'd* 90 F.C.C.2d 27 (1982).

<sup>31</sup> *Catoctin Broadcasting Corp. of New York*, 2 FCC Rcd 2126, 2137 (Rev.Bd. 1987), *aff'd* 4 FCC Rcd 2553, *recon. denied* 4 FCC Rcd 6312 (1989) (the applicant for renewal did not allow members of the public to view the public inspection file, among other serious file violations, and its renewal application was denied).

<sup>32</sup> Southern's Opposition at 3, Bob Donaghey's Statement.

<sup>33</sup> Southern also acknowledged its failure to properly maintain the file at appropriate times in a December 4, 2003, amendment to its Application.

<sup>34</sup> See *Tabback Broadcasting Company*, 15 FCC Rcd 11899, 11900 (2000); *Lincoln Dellar*, 8 FCC Rcd 2582 2584 (MMB 1983).

*Misrepresentation in Section III, Question 3 of Southern's Amendment to its Application.*

Piedmont also claims that when Southern amended its Application on October 14, 2003, to change its answer to Section III, Question 3 of the renewal application, it misrepresented the completeness of its public inspection file within the amendment.<sup>35</sup> Piedmont indicates that, in the original application, Southern “accurately” answered “No” to the certification regarding the completeness of WKVE(FM)’s public inspection file, providing an exhibit indicating that “with some possible exceptions” – such as instances in which the quarterly issues/programs list was placed in the file more than 10 days after the end of the quarter – Southern believed it had “substantially complied” with the rule. In the October 14, 2003, amendment, Southern changed its answer to “Yes,” stating that the “public inspection file is complete” although the licensee “is unable to certify with absolute certainty that the documentation required by 47 C.F.R. 73.3526 has been placed in the public inspection file at exactly the appropriate time over the license period.” The public inspection file, argues Piedmont, was not complete, and the statement in the October 14, 2003, amendment constituted a misrepresentation to the Commission. Southern does not address the misrepresentation claim in its Opposition.

However, on December 4, 2003, Southern again amended its Application. In this amendment, Southern changed its response to the public file certification question back to “No” and attached an Exhibit stating that “The Public and Broadcasting” manual was in the file “for a portion of the license term” but missing from the file when the Station Manager inspected the file “sometime after November 1, 2003.”<sup>36</sup> Southern also repeated its prior statement that, although it believed that it substantially complied with the requirements of Section 73.3526, it was “unable to certify with absolute certainty that the documentation required . . . has been placed in the station’s public inspection file at exactly the appropriate time over the entire license period.”<sup>37</sup> As originally filed and with each amendment, Southern conceded that it could not be certain that all documentation was placed in the WKVE(FM) public inspection file at the time specified in the Commission’s rules. Southern’s most recent amendment changing its response to the public file certification question back to “No” appears to be based on its conclusion that the manual “The Public and Broadcasting” was missing from the file. We find no false statements or material omissions in Southern’s responses or representations in its renewal application and various amendments thereto. Accordingly, Southern did not engage in misrepresentations or otherwise lack candor, and Piedmont’s allegations must fail.<sup>38</sup>

*License Renewal Application.* In evaluating an application for license renewal, the staff’s decision is governed by Section 309(k) of the Communications Act of 1934, as amended. This section provides that if, upon consideration of a renewal application and pleadings, we find that (1) the station has served the public interest, convenience, and necessity; (2) there have been no serious violations of the

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<sup>35</sup> Piedmont’s Petition at 8-9.

<sup>36</sup> Southern’s December 4, 2003, Amendment to Application for Renewal of the License of WKVE(FM), Exhibit 11. We acknowledge that this amendment was filed after Piedmont’s petition. The amendment indicates that Southern attempted to file it on December 3, 2003 (the date on which it filed its Opposition), although (as noted above) it is not referenced in that pleading.

<sup>37</sup> *Id.*

<sup>38</sup> See, e.g., *Southern Skies Corporation*, 11 FCC Rcd 19176, 19182 (1996) (renewal applicants made no false statements or material omissions from their presentations to the Commission, and thus did not engage in misrepresentation or lack of candor.)

Communications Act or the Commission's Rules; and (3) there have been no violations that, taken together, show a pattern of abuse, we will grant the renewal application.<sup>39</sup>

Violation of Section 73.3526. The Commission's public inspection file rules serve the critical function of making available to the public important station information, including ownership, community service, "The Public and Broadcasting" manual, etc.<sup>40</sup> Although Southern admittedly failed to consistently maintain a copy of the manual in WKVE(FM)'s file, on balance, we do not find its violation of Section 73.3526 to be a "serious violation." As to Piedmont's other allegations (no pending renewal and no pre-filing announcements), as noted above, even if true, these omissions would not warrant designation of the renewal application for evidentiary hearing. Nevertheless, we will admonish Southern and remind the licensee that its public inspection file should be organized so that the public can access and readily locate items in the file.<sup>41</sup> WKVE(FM)'s staff should also continue to make itself available for questions about the file, pursuant to Section 73.3526(c)(2)(iii) of the Commission's rules.

Violation of Section 1.17. Additionally, as stated in Note 4 above, Southern was issued a Notice of Apparent Liability for \$19,250 by the full Commission in November of 2003 for violation of Section 1.17 of the Commission's rules, which requires the submission of truthful written material to the Commission.<sup>42</sup> Southern violated that provision when it altered the dates of letters submitted in an October 23, 1996 Opposition to Application for Review. Certainly, the submission of false written material to the Commission could be considered a "serious" violation of the Commission's rules such that the subject renewal application must be designated for evidentiary hearing under Section 309(k) on that basis alone. The trait of truthfulness is one the key elements of character necessary to operate a broadcast station in the public interest.<sup>43</sup> Acts of willful misrepresentation and lack of candor raise immediate concerns as to whether a licensee will be truthful in future dealings with the Commission.<sup>44</sup> However, the Commission determined in the *Semora MO&O* that "the conduct was isolated to one pleading, was not decisionally significant, and the letters in question were not submitted in response to any Commission question or inquiry."<sup>45</sup> The Commission thus found it unnecessary to convene a hearing to consider Southern's basic qualifications. Indeed, the Commission ultimately reduced the proposed forfeiture from the regulatory maximum of \$27,500 down to \$19,500. Accordingly, in light of the *Semora MO&O* and on the facts presented here, we find no "serious violation" of the Communications Act or the Commission's rules that would require designation of the WKVE(FM) renewal Application for evidentiary hearing under Section 309(k).

Moreover, we have reviewed the WKVE(FM) license renewal Application, and we find no evidence of violations that, when considered together, evidence a pattern of abuse<sup>46</sup> and that WKVE(FM)

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<sup>39</sup> 47 U.S.C. § 309(k)(1). The renewal standard was amended to read as described by Section 204(a) of the Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996). See *Order*, "Implementation of Sections 204(a) and 204(c) of the Telecommunications Act of 1996 (Broadcast License Renewal Procedures)," 11 FCC Rcd 6363 (1996).

<sup>40</sup> 47 C.F.R. § 73.3526.

<sup>41</sup> 47 C.F.R. § 73.3526(c)(2)(iii).

<sup>42</sup> Southern paid the amount specified in the NAL in December of 2004.

<sup>43</sup> See *Policy Regarding Character Qualifications in Broadcast Licensing*, 102 F.C.C.2d 1178, 1209-1210 (1986).

<sup>44</sup> *Id.*

<sup>45</sup> *Semora MO&O*, 19 FCC Rcd at 23421 ¶ 20.

served the public interest, convenience, and necessity during its past license term. We will therefore grant the Application below.

*Conclusions/Actions.* Accordingly, pursuant to Section 1.113(a) of the Commission's rules, IT IS ORDERED that the July 7, 2005 Staff Action in this proceeding, DA 05-1939, IS HEREBY RESCINDED and the WKVE(FM) license renewal application (BRH-20030801AJL) and all related pleadings ARE REINSTATED TO PENDING STATUS.

IT IS FURTHER ORDERED that, in light of the above discussion, Southern Entertainment Corporation IS HEREBY ADMONISHED for its apparent violation of 47 C.F.R. Section 73.3526, and we caution the licensee to be and remain more diligent in the future regarding the completeness of WKVE(FM)'s public inspection file.

IT IS FURTHER ORDERED, that (1) Piedmont Broadcasting Corporation's December 19, 2003, Motion for Extension of Time IS GRANTED, and its January 6, 2004, Reply IS ACCEPTED to the extent indicated herein, (2) Southern's January 22, 2004, Motion for Leave to File Response to Reply to Opposition to Petition to Deny IS DENIED, and its Response to Reply to Opposition to Petition to Deny IS DISMISSED, and (3) Piedmont's February 4, 2004, Motion for Leave to File Opposition to Response to Reply to Opposition to Petition to Deny IS DENIED, and its Opposition to Response to Reply to Opposition to Petition to Deny IS DISMISSED.

Finally, IT IS ORDERED, that Piedmont's August 1, 2003, Petition to Deny the Application for Renewal of the License IS DENIED, and the Application of Southern Broadcasting Corporation (File No. BRH-20030801AJL) for Renewal of the License of WKVE(FM), Semora, North Carolina, IS GRANTED.

Sincerely,

Peter H. Doyle, Chief  
Audio Division  
Media Bureau

cc: James K. Edmundson, Esq.

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<sup>46</sup> For example, we do not find that WKVE(FM)'s operation was "conducted in an exceedingly careless, inept and negligent manner and that the licensee is either incapable of correcting or unwilling to correct [any] operating deficiencies." *Heart of the Black Hills Stations*, 32 F.C.C.2d 196, 198 (1971). "[T]he number, nature and extent" of Southern's violations also do not indicate that "the licensee cannot be relied upon to operate [WKVE(FM)] in the future in accordance with the requirements of its licenses and the Commission's Rules." *Id.* at 200.



